UNITED STATES
v.
FREDERICK A. HAGG, ET AL.

IBLA 77-64 Decided February 23, 1977

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring the interests of defaulting contestees in certain mining claims null and void. Contest No. 574.

Affirmed.

1. Mining Claims: Contests--Rules of Practice: Government Contests

When a mining claimant has failed to answer a complaint in a mining contest, the allegations are deemed admitted and the State Office of the Bureau of Land Management will decide the case without a hearing. 43 CFR 4.450-7(a).

2. Mining Claims: Contests--Rules of Practice: Government Contests

A defaulting contestee may not rely on an answer filed by another contestee in the same contest when such answer never purported to be on behalf of the defaulting contestee.

APPEARANCES: Frederick A. Hagg, pro se, and on behalf of Henry J. Hagg, Herbert A. Hagg and the heirs of Albert F. Hagg, being Celesta Hagg, Margaret Hagg and Steve Hagg.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On April 24, 1974, the Colorado State Office, Bureau of Land Management (BLM), issued a complaint in Contest No. 574. The complaint listed 59 contestees and over 70 mining claims and one millsite. The claims were all located around the turn of the century

and were recorded in Lake County, Colorado. The complaint charged:

a. No valuable mineral deposits have been discovered within the boundaries of the claims.

b. The lands within the boundaries of the claims are nonmineral in character.

c. The claims are located partly on lands that have been reserved from appropriation under the public land laws since July 2, 1910, or on lands that have been so reserved since June 3, 1946, or on lands that have been so reserved since December 11, 1962, or on lands that have been so reserved since September 9, 1971, and no valuable mineral deposits were discovered within the boundaries of the claims before the lands were so reserved.

d. The claims have not been maintained by the annual expenditure of $ 100 per claim in labor or improvements upon or for the benefit of each claim for the purpose of developing valuable mines.

e. The millsite is not being used for mining or milling purposes in connection with a valid mining claim.

f. The millsite is located partly on lands that have been reserved from appropriation under the public land laws since May 24, 1946, and the millsite was not being used for mining or milling purposes in connection with a valid mining claim before the lands were so reserved.

Service of the complaint was made by certified mail and by publication. The only contestee to file an answer to the complaint was The Children's Hospital Association. The answer of The Children's Hospital Association did not purport to be on behalf of any other contestee.

[1] The rules of practice for the Department governing procedures in contest proceedings provide that within 30 days after service of the complaint a contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint. 43 CFR 4.450-6. The rules provide further that if an answer is not filed as required:

> * * * the allegations of the complaint will be taken as admitted by the contestee and the Manager [The State Office of the Bureau of Land Management] will decide the case without a hearing. 43 CFR 4.450-7(a).

On October 18, 1976, BLM issued a decision 1/ stating:

> * * * the allegations are taken as admitted and all interests to the above-named mining claims by contestees failing to file an answer are hereby declared null and void pursuant to 43 CFR Subtitle A, Part 4, Subpart E, Paragraph 4.450-7(a).

One of the defaulting contestees, Frederick A. Hagg, has appealed the decision on his behalf and on behalf of certain other contestees, none of whom filed an answer to the complaint. Appellant, Frederick A. Hagg, states that he and his two brothers traveled to Colorado to examine records of the claims in the Leadville Court House; however, they discovered that most of the old records had been destroyed by fire. Appellants explain their failure to answer the complaint by stating:

> So we thought that there was no way we could prove any claims so did not file in 1974.

Appellants continued:

> Since The Children's Hospital Association, who you said filed a timely answer, we would like to appeal because perhaps you may have access to records we couldn't locate.

[2] As stated above, the answer of The Children's Hospital Association did not purport to be on behalf of any other contestee, therefore, appellants may not rely on such answer as curing their failure to answer. United States v. Zweifel, 11 IBLA 53, 91 (1973); United States v. Holcomb, A-31019 (August 21, 1969).

Apparently, appellants' appeal was not precipitated by a belief that any of the contested mining claims were valid, but was filed only in reaction to learning that The Children's Hospital Association had filed an answer and because appellants felt that if the Government had records of their interests in certain claims, they were concerned about protecting
those interests.

1/ The BLM decision did not rule on the answer filed by The Children's Hospital Association. Therefore, the contest is still pending as to that organization.

Under the mining law the mere recordation of a mining claim gives the locator no rights as against the Government. In order to establish the validity of a mining claim, the claimant must show the discovery of a valuable mineral deposit within the limits of a claim. 30 U.S.C. § 22 (1970). A claimant may show a discovery by producing evidence that a mineral has been found and that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine. Castle v. Womble, 19 L.D. 455, 457 (1894).

Appellants appear to be unfamiliar with the claims in question, therefore, even assuming they had filed an answer and a hearing had been held, it is extremely unlikely that appellants could have produced evidence sufficient to establish the validity of any of the claims.

Herein, appellants failed to file an answer. The regulations are clear. BLM acted properly in declaring the mining claims null and void as to any interests held by the defaulting contestees.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman

Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge